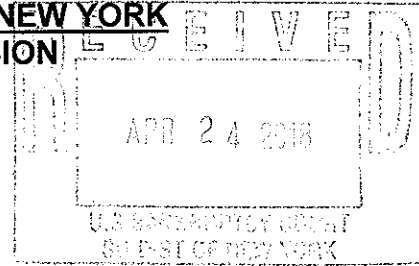


United States Bankruptcy Court

SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION



LOLINA PORTER, Pro Se
Claimant

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In re:

RESIDENTIAL CAPITAL, LLC et al.

Debtors.

Address:

Residential Capital, LLC
c/o ResCap Liquidating Trust
MORRISON & FOERSTER LLP 250
West 55th Street
New York, New York 10019

Case No. 12-12020-MG

Chapter 11

Jointly Administered

**THE CLAIMANT PORTER'S RESPONSE TO RESCAP BORROWER CLAIMS TRUST'S
OBJECTION TO THE MOTION FILED BY LOLINA PORTER FOR LEAVE TO FILE
PROOF OF CLAIM OUT OF TIME AND MOTION TO LITIGATE DEBTOR IN THE
DISTRICT COURT FOR NON-DISCHARGEABILITY DETERMINATION**

**To the Honorable United States Bankruptcy Court Judge Martin Glenn for the
Southern District of New York Manhattan Division:**

**The Claimant, Lolina Porter, pro se, hereby respectfully and humbly submits this
response (the "Response") to the ResCap Borrower Claims Trust's Objection to the**

1 Notice of Motion Filed by Lolina Porter for Leave to File Proof of Claim Out of Time and
2 Motion to Litigate Debtor in the District Court for Non-dischargeability Determination
3 [Docket No. 10465] (the "Objection") filed by the Counsel for the ResCap Borrower
4 Claims Trust.

5
6 The ResCap Borrower Trust submitted their Objections [Docket No. 10465] to
7 Lolina Porter's Notice of Motion for Leave to File Proof of Claim Out of Time and Motion
8 to Litigate Debtor in the District Court for Non-dischargeability Determination. The
9 ResCap Borrower Trust also recommended to the honorable Bankruptcy Judge that
10 Movant/Claimant Porter's Motion be denied and Movant be barred from asserting any
11 claims against the Debtor's estates.
12

13 The Claimant do hereby expresses her gratitude and thanks to the Honorable
14 United States Bankruptcy Court Judge Glenn for granting her request of hearing in the
15 Bankruptcy court and for allowing her to respond to the ResCap Borrower Claims Trust's
16 Objection to the Motion Claimant Porter filed.
17

18 In conformity with the Official Bankruptcy Form 420A (Notice of Motion or
19 Objection) (12/16), Claimant submits the following response:
20

21 **I. PRELIMINARY STATEMENT**

22 **Section 523(a)(2)(A) – Fraud (Non-Dischargeable Debt)**

23 Section 523(a)(2)(A) of the Bankruptcy Code provides an exception from the
24 discharge of any debt for money, property or services, to the extent such debt was
25 obtained by false pretenses, a false representation, or actual fraud. **11 U.S.C. §**
26 **523(a)(2)(A).**
27
28

1 **Section 523(a)(2)(A)** requires a showing of actual fraud rather than
2 constructive fraud or fraud implied in law. A claim of non-dischargeability under
3 **Section 523(a)(2)(A)** requires the creditor establish each of the following elements:
4

- 5 1. the debtor made a representation;
- 6
- 7 2. the debtor knew at the time the representation was false;
- 8
- 9 3. the debtor made the representation with the intention and purpose of
10 deceiving the creditor;
- 11 4. the creditor relied on the representation; and
- 12
- 13 5. the creditor sustained damage as the proximate result of the representation.

14 In re Apte, 96 F.3d 1319, 1322 (9th Cir. 1996); In re Kirsh, 973 F.2d 1454, 1457
15 (9th Cir. 1992).
16

17 **Section 523(a) (6)** provides that an individual may not be discharged from
18 debt for "**willful and malicious injury**" by the debtor to another entity or to the
19 property of another entity. "**Willful and malicious**" **does not require the creditor to**
20 **prove that the debtor acted with intent to injure.** Rather, it requires only that the
21 creditor prove that there was a "**wrongful act**" which was "**done intentionally**" and
22 which "**necessarily produces harm**", "**even absent proof of a specific intent to**
23 **injure.**"
24

25 In re Cecchini, 780 F.2d 1440, 1443 (9th Cir. 1986).
26
27
28

Bankruptcy Rule 9006(b)(1) – Excusable Neglect (Allows Late Claim Filing)

If it was a result of excusable neglect, and it listed four factors courts must consider when determining whether excusable neglect exists:

- (1) the danger of prejudice to the non-moving party,
- (2) the length of the delay and its potential impact on court proceedings,
- (3) the reason for the delay, including whether it was within the movant's reasonable control, and
- (4) whether the movant acted in good faith.

Additionally, it stated that excusable neglect is an equitable standard that requires courts to take "account of all relevant circumstances surrounding the party's omission". Claimant Porter being out of the US is excusable neglect for not responding in time, since she could not respond since she was out of the country

A motion for reconsideration is made pursuant to Federal Rule of Civil Procedure 60, as incorporated by Federal Rule of Bankruptcy Procedure 9024. Federal Rule of Civil Procedure 60(b) provides for reconsideration based on, among other things, (1) mistake, inadvertence, surprise, or **excusable neglect**; and (6) **any other reason that justifies relief. Fed. R. Civ. P. 60(b)(1) and (6)**. "Rule 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest injustice". United States v. Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir. 1993). "The **rule** is to be utilized only where **extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment.**"

1 A bankruptcy court may extend the time for filing a notice of appeal for any party. Fed. R.
2 Bankr. P. 8002(c)(1), an extension may be granted upon a showing of excusable neglect.
3 Fed. R. Bankr. P. 8002(c)(2).
4

5 **II. BACKGROUND**

6 **a. Series of Events**

- 7 1) **July 2009 – Sept 2011** (all throughout these times Claimant had to
8 help her husband who suffered from ischemic stroke, drove her
9 husband to his therapies for he lost his ability to remember a lot of
10 words, dates, and stories of his past, and lost his ability to walk on
11 top of managing her household with her youngest son who is going
12 to a public elementary school.
13
14 2) **February 2010** (GMAC and its subsidiaries wrongfully foreclosed
15 on Claimant Porter's property that was part of her family's livelihood
16 while her husband was in and out of the hospital due to stroke)
17
18 3) **October 2010** (Claimant Filed Complaint against GMAC in the US
19 District Court in Memphis, Tennessee)
20
21 4) **December 2010** (9 year old daughter got kidnapped in the
22 Philippines, was retrieved after 7 days, Claimant filed a Criminal
23 Kidnapping Case against the kidnapper)
24
25 5) **May 14, 2012** (GMAC filed Chap 11 BK, Claimant received
26 notification)
27
28

- 1 6) **August 2013** (Claimant moved her daughter to Ireland's Christian
2 Dormitory School named Wilson Hospital School as recommended
3 by her Psychologist and prompted by Children's Social Services)
4
5 7) **December 11, 2013** (GMAC's Borrowers Claims Trust was
6 established and notified claimants to file their claims) – Claimant
7 did not receive this mail, hence, Claimant cannot respond, because
8 she was out of the country.
9
10 8) **April 2014 – June 2017** (daughter still in Ireland until August 2014,
11 Claimant travelled to Philippines to attend the Kidnapping hearing
12 and also travelled to Mississippi)
13
14 9) **September 2014** (Claimant moved her daughter from Ireland to
15 French Camp Academy in Mississippi USA, Claimant travels
16 frequently to Mississippi in support of her daughter out of state)
17
18 10) **February 19, 2015** (GMAC's Liquidating Trust filed a motion to
19 enforce injunction provisions of plan and confirmation order) -
20 Claimant did not receive this mail, hence, Claimant cannot respond,
21 because she was out of the CA State and was in TN and
22 Mississippi most of the time.
23
24 11) **June 30, 2015** (GMAC's Trust claimed that Claimant was sent this
25 letter the first time), Nov. 19, 2015 (GMAC's Trust claimed that
26 Claimant was sent the same letter the second time), this letter is for
27 them to ask Claimant to withdraw GMAC as Defendant from the
28 filed complaint in the US District Court For The Western District of

1 Tennessee – Western Division. In both of these letters, GMAC
2 **wrongfully claimed** that the **Claimant Porter's Filed Complaint**
3 **was pending before the US District Court for the Southern**
4 **District of California.** Claimant did not receive the first and second
5 mail, hence she did not get a chance to open or even read these 2
6 letters at this time due to her out of CA State travel responsibilities
7 with her daughter to Mississippi, and out of country travel
8 responsibilities to attend the kidnapping case hearing in the
9 Philippines.
10

11
12 12) January 2017, (when claimant's daughter has improved from Post
13 Traumatic Stress Disorder (PTSD) and moved her daughter back to
14 CA)

15 13) September 2017 (Claimant received the local court's Show Cause
16 Order)
17

18 14) October 26, 2017 (Claimant personally filed a Show Cause Order
19 Response and physically attended the Telephonic Court Hearing
20 held at the local District Court in Western Tennessee. The District
21 Court Judge asked Plaintiff Porter/Claimant if she was willing to
22 voluntarily dismiss GMAC as Defendant in the Case No. 2:10-cv-
23 2858-SHM-dkv, Plaintiff/Claimant in tears declined to voluntarily
24 dismiss GMAC from the aforementioned Case filed by Claimant
25 Porter as Pro Se Plaintiff). The Honorable District Court Judge
26 Diane K. Vescovo directed GMAC to file their Supplemental
27
28

1 Briefing (See District Court Docket No. 65 of Case No. 2:10-cv-
2 2858-SHM-dkv of the United States District Court For the Western
3 District of Tennessee – Western Division (US DC for WDT –
4 Western Div)).

5 15) November 20, 2017 (GMAC filed the Supplemental Briefing at US
6 DC for WDT – Western Division)

7 16) December 7, 2017 – Plaintiff/Claimant Porter filed her response to
8 the Supplemental Briefing.

9
10 The Complaint that Pro Se Plaintiff Porter (who is the Claimant in this
11 Bankruptcy Case No. 12-12020 (MG)) filed in October 2010 **is meritorious**.
12 Please see the complete Background in Porter's filed Motion to Allow
13 Claims /*Motion For Leave To File Proof of Claim*, Motion to Authorize /*Motion*
14 *to Allow Claimant To Continue To Litigate Debtor In The District Court*
15 **[Docket#10451]**.
16
17
18

19 **III. CONCLUSION**

20
21 a. Claimant Lolina Porter as the Borrower, was harmed deeply when GMAC
22 Homecomings LLC promised a Loan Modification to the claimant on her
23 livelihood rental real property located at 6131 Woodstock View Rd.
24 Millington TN 38053, kept the Claimant/Borrower hoping for that
25 modification yet, GMAC sold the servicing of the loan to Aurora Loan
26 Services.
27
28

1 b. Aurora Loan Servicing with GMAC's knowledge played around with their
2 scheme to intentionally create a scenario where Claimant Porter (Borrower
3 at that time) was setup to default in the loan, even though Claimant has paid
4 what was asked and required, followed through with the instructions from
5 Aurora Loan Services, gave all necessary information over the phone during
6 the interview portion yet, entered a wrong information in their system to
7 setup the Claimant to fail, which was what GMAC & Aurora Loan Services
8 intended to so that they can foreclose on the subject real property, GMAC's
9 Homecomings Financial LLC to collect from the Private Mortgage Insurance
10 (PMI), and Aurora Loan Services to buy the property at foreclosure sale and
11 sell it at a very low price for additional gain.
12

13
14 c. **Inspired by hurt, feeling deceived, lost a livelihood, yet cannot afford**
15 **an attorney**; the Claimant filed a complaint at the Local District Court as Pro
16 Se. The Claimant was praying and hoping to be heard by the Judge then.
17 However, none of the Defendants attended the first hearing set by the Local
18 Court in Memphis, TN.
19

20 d. Nonetheless, Claimant's desire to seek justice from the court to reveal the
21 **"wrongful act"** which was **"done intentionally"** and which **"necessarily**
22 **produces harm"**- the harm from the fraud GMAC and its subsidiaries has
23 done to the Claimant and her family did not stop right then.
24

25 e. Being out of the US for so many times from 2012 through 2017 to attend to
26 the kidnapping case in the Philippines, and to secure her daughter's life,
27 education and safety in Ireland as well as afterwards out of CA state into
28

1 Mississippi state, the Claimant strongly believe that these are valid
2 **excusable neglect for not responding in time.**

- 3 f. Claimant's priority shifted due to kidnapping impact to her daughter and to
4 her family during those years. However, Claimant Porter never quits in her
5 heart, mind and soul to continue the fight she started about fraud caused by
6 GMAC and their subsidiaries, because she strongly believe, that aside for
7 her case, there are many other Borrowers out there who were harmed by
8 the Debtor and that this **fraud GMAC committed is a non-dischargeable**
9 **debt in the US Bankruptcy Law – Section 523(a)(2)(A) – Fraud.**
10
11
12

13 **IV. WHEREFORE, PREMISES CONSIDERED, CLAIMANT PRAYS:**

- 14 1) For this Honorable Bankruptcy Court to forgive the Claimant, for she has no
15 intentions of disrespecting the bankruptcy court rules and expectations as the
16 Claimant had a family emergency when her then 9 year old daughter who was
17 kidnapped, was retrieved by the police but suffered Post Traumatic Stress Disorder
18 (PTSD), that the Claimant had to drop everything including working full-time as a
19 Software Engineer just to help her daughter cope with emotional and mental disorder
20 after kidnapping which resulted in the Claimant's need for frequent travels to Ireland,
21 Philippines and Mississippi.
22
23
24 2) For this Honorable Bankruptcy Court to acknowledge Claimant's statement that only
25 in or around September 22, 2017 is when the Claimant first received and read the
26 Order Granting ResCap Liquidating Trust's Omnibus Motion To Enforce Injunctive
27 Provisions of Plan and Confirmation Order with the List of Litigation Parties.
28

1 However, the Claimant is not disputing the dates GMAC claimed to have sent the
2 same document to her mailing address.

3
4 3) For this Honorable Bankruptcy Court to allow the Claimant to learn if US Bankruptcy
5 Law was created also to protect, and relieve an entity such as GMAC from being
6 punished for "imposing unfair and abusive loan terms on borrowers" or "predatory
7 lending", or for "**willful and malicious injury**" and that they can walk away without
8 being responsible for the wrong actions made by them which caused a lot of family in
9 distressed, felt violated, and deceived for the Debtor's greater gain.

10
11 4) For this Honorable Bankruptcy Court to order GMAC to pay Compensatory Damages
12 to Claimant, which are intended to restore what Claimant has lost as a result of
13 GMAC's "**willful and malicious wrongful conduct**" in foreclosing the property that
14 is part of her livelihood.

15
16 5) For this Honorable Bankruptcy Court to order GMAC to pay the Loss of Rents from
17 the time they foreclosed the subject property until the civil case in the District Court is
18 settled.

19
20 6) For this Honorable Bankruptcy Court to order GMAC to pay the Plaintiff all PMI
21 premiums that they have collected for the Private Mortgage Insurance that Plaintiff
22 was paying per month since the Loan Origination with Homecomings
23 Financials/GMAC with reasonable interest based on each year's prevailing rate since
24 that payment started until the civil case in the District Court is settled
25
26
27
28

- 1 7) For this Honorable Bankruptcy Court to order GMAC to pay all monies, down
2 payments, mortgage payments, interest and all monies received by Homecomings
3 Financials, and Aurora Loan Services from the Claimant from the Loan Origination
4 time until Aurora Loan Services, LLC foreclosed the subject property on behalf of
5 Homecomings Financials/GMAC with reasonable interest until this case is settled.
6
- 7 8) For this Honorable Bankruptcy Court to order GMAC to Quiet Title the alleged
8 Wrongfully Foreclosed Property located at 6131 Woodstock View Dr. Millington, TN
9 38053 back to the Claimant free and clear since Claimant was the one who paid all
10 the premiums for the Private Mortgage Insurance where GMAC and its servicer
11 Aurora Loan Services LLS (who no longer exist to this day as a company) is the one
12 who benefited from the Claimant's paid premium Private Mortgage Insurance. This is
13 so that Claimant can maintain the house and repair it back to where it will not be an
14 empty, dilapidated structure where possible drug users may use as their hideout and
15 to protect the surrounding community.
16
17
- 18 9) For this Honorable Bankruptcy Court to grant Claimant Leave to File Proof of Claim
19 Out of Time due to **Excusable Neglect** as stated in the Claimant's Conclusion that
20 Claimant was out of the Country frequently during those times.
21
- 22 10) For this Honorable Bankruptcy Court to grant Claimant to Continue to Litigate Debtor
23 as Defendant in the civil case filed prior to the Debtor Filing its Chapter 11
24 Bankruptcy in the US District Court for further determination if the Porter's claims
25 against the debtor is a "**dischargeable debt**" or "**non-dischargeable debt**"
26 pursuant to 11 U.S.C. § 523(c); Fed. R. Bankr. P. 4007(c).
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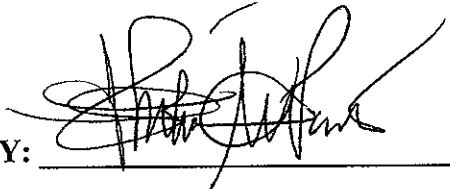
1 **11)** For this Honorable Bankruptcy Court to schedule a hearing if necessary that the
2 Claimant may be able to explain her position. (**Granted** – Schedule of Hearing is on
3 May 8, 2018 @ 10AM)
4

5 **12)** For such further and other relief as to which the Claimant may be entitled that this
6 Honorable Bankruptcy Court may judge appropriately.
7

8 **13)** For help that the truth & fairness may prevail in the United States District and
9 Bankruptcy Courts.
10

11 So help the truth and fairness to prevail O God.
12

13 **RESPECTFULLY SUBMITTED: This 23rd day of April in the year, 2018 .**
14

15
16 BY:  ,

17 **LOLINA PORTER, pro se**
18 **Claimant**

19 832 Monterey Rd.

20 Glendale, CA 91206

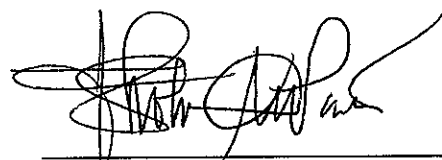
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1
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3 STATE OF ~~NEW YORK~~
CALIFORNIA
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5
6 ~~COUNTY OF NEW YORK~~ *LOS ANGELES*
7

8 I, Lolina Porter, hereby state under oath that the facts and allegations of the
9 complaint filed herein, and the facts and matters set forth are true and correct to the best of
10 my knowledge, information, and belief, and that I am justly entitled to the relief sought.
11

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LOLINA PORTER

Sworn and subscribed to before me this the 23 day of April, 2018.




Notary Public

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Certificate of Service

THE CLAIMANT PORTER'S RESPONSE TO RESCAP BORROWER CLAIMS TRUST'S
OBJECTION TO THE MOTION FILED BY LOLINA PORTER FOR LEAVE TO FILE
PROOF OF CLAIM OUT OF TIME AND MOTION TO LITIGATE DEBTOR IN THE
DISTRICT COURT FOR NON-DISCHARGEABILITY DETERMINATION

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To be delivered to:

Honorable Judge Martin Glenn

US Bankruptcy Court

Southern District of New York

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New York, NY 10004-1408

Via United Parcel Service

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Norman Rosenbaum, Morrison & Foerster LLP